

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SELIM ZHERKA, and THE GUARDIAN NEWS, INC.,

07 Civ. 4065 (CLB)

Plaintiffs,

-against-

RUSSELL MARTINEZ, individually, STEPHEN
FORCE, individually, and EDWARD FALCONE,
individually,

Defendants.
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**DECLARATION IN SUPPORT
OF ORDER TO SHOW CAUSE**

RUSSELL DEUTSCHEN, hereby declares under penalty of perjury that the following is true and correct:

1. I am employed by the Yonkers Public Library as its Head Custodian at the Grinton I. Will Library, which is located at 1500 Central Park Avenue, Yonkers, New York 10710 (the "Will Library"). I have been employed by the Yonkers Public Library and have worked at the Will Library for approximately 27 years.

2. I submit this Declaration in support of the motion made by the Yonkers Public Library requesting: (i) leave to intervene in this action, and (ii) a preliminary injunction requiring the removal of certain receptacles used for dispensing free copies of The Westchester Guardian newspaper (the "Guardian Boxes") that were placed inside the Will Library and the Riverfront Branch of the Yonkers Public Library (the "Riverfront Library"). The Riverfront Library is located at 1 Larkin Center, Yonkers, New York, 10701.

3. Except where otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge.

4. By way of background, my duties as the Head Custodian at the Will Library include cleaning, making minor repairs, setting up conference rooms for meetings, preparing cleaning schedules and supervising a cleaning staff of approximately eight (8) individuals.

5. On or about July 9, 2007, I observed that a Guardian Box had been placed in a main hallway of the Will Library near the building's auditorium. A public meeting was scheduled for the next day in the auditorium at which the City of Yonkers Mayor was scheduled to appear. The Guardian Box was placed in the hallway such that anyone entering the building from the parking lot and proceeding to the auditorium would necessarily have to walk past it.

6. Later that month, I was instructed by a supervisor to remove the Guardian Box from the hallway and to put it into storage on the premises. I was also instructed to place any newspapers in the Guardian Box next to the other free newspapers and periodicals that the Will Library makes available inside the building's vestibule at its entrance on Central Avenue. I complied with these instructions.

7. Thereafter, I observed that two (2) new Guardian Boxes had been placed inside the Will Library. One of these boxes had been placed in the vicinity of the auditorium (this time in a different hallway), while the other was placed inside the building's vestibule at its entrance on Central Avenue.

8. Shortly thereafter, I was instructed once again by a supervisor to place these new Guardian Boxes into storage and to move any newspapers they contained to the building's vestibule. I complied with these instructions.

9. A few weeks later, in September 2007, I observed two (2) men enter the Will Library carrying additional Guardian Boxes. I asked them who had authorized them to bring these new boxes into the Library, and one of them replied, in words or substance, that “my boss knew about it.” I did not attempt to stop them from leaving the new boxes inside the Library, which they did.

10. At the present time, there are still two Guardian Boxes inside the Will Library — one is situated near the building’s auditorium, and the other is inside the building’s vestibule at its entrance on Central Avenue.

11. The Will Library distributes free newspapers and similar periodicals inside the building’s vestibule at its entrance on Central Avenue. The Will Library has never allowed newspaper vending machines or dispensers to be placed inside the building.

Dated: November 1, 2007
Yonkers, New York


RUSSELL DEUTSCHEN